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U.S. Department of Homeland Security

Citizenship and Immigration Services

G-1


ADMINISTRATIVE APPEALS OFFICE

CIS, AAO, 20 Mass, 3/F

425 I Street N.W.

Washington, D.C. 20536



FILE: 

Office: Harlingen

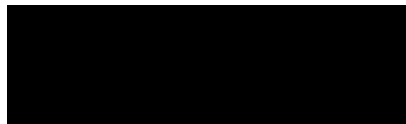
Date: **JAN 02 2004**

IN RE: Obligor:
Bonded Alien:



IMMIGRATION BOND: Bond Conditioned for the Delivery of an Alien under Section
103 of the Immigration and Nationality Act, 8 U.S.C. § 1103

ON BEHALF OF OBLIGOR:



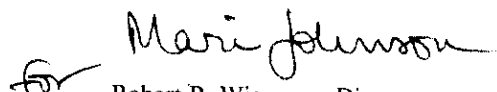
INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of Citizenship and Immigration Services (CIS) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. § 103.7.


Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The delivery bond in this matter was declared breached by the Field Office Director, Harlingen, Texas, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record indicates that on August 31, 2000, the obligor posted a \$5,000 bond conditioned for the delivery of the above referenced alien. A Notice to Deliver Alien (Form I-340) dated August 5, 2003 was sent to the obligor via certified mail, return receipt requested. The notice demanded the bonded alien's surrender to Immigration and Customs Enforcement (ICE), at 10:00 a.m. on September 5, 2003, at [REDACTED]. The obligor failed to present the alien, and the alien failed to appear as required. On September 11, 2003, the field office director informed the obligor that the delivery bond had been breached.

On appeal, counsel states that the bonded alien is a national of El Salvador who has been continuously residing in the United States since his entry on July 10, 2000. Counsel further states the bonded alien is therefore eligible for Temporary Protected Status (TPS) and his eligibility raises questions as to whether his bond has "ceased to exist as a matter of law" since a grant of TPS terminates ICE's detention and removal authority.

TPS is a temporary immigration status granted to eligible nationals of designated countries. During the period for which the Attorney General has designated a country under the TPS program, approved nationals of the designated country are not required to leave the United States. However, TPS is not a grant of permanent residence. When the Attorney General terminates a country's TPS status, the beneficiaries revert to the same immigration status they maintained before they were granted TPS. There are several factors to be considered before an alien may be eligible to apply for and receive TPS benefits. Although counsel does not state how he knows the alien has resided continuously in the United States since his entry, continuous residency is but one factor to consider. Section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254.

Jurisdiction to determine whether an alien is eligible for TPS lies with CIS or the immigration judge, and counsel has submitted no evidence that the bonded alien has been granted TPS status.

Counsel also asserts on appeal that ICE "has an affirmative duty to inform [the alien] of his eligibility" for TPS.

Sections 244(a)(3)(B) and (C) of the Act require notice to aliens in removal proceedings of their eligibility for TPS. While the alien within the context of removal proceedings must be provided notice of his or her eligibility for TPS, this requirement has no bearing on the obligor's contractual duty to deliver the alien. Even assuming that ICE were to lose detention authority over an alien who may be eligible for TPS, as noted *infra*, this would not require cancellation of the delivery bond.

Counsel further states on appeal that the immigration judge administratively closed this case on March 28, 2001; however, ICE let it sit idle for over two years before taking action. Counsel contends that such a lengthy period of inactivity makes it virtually impossible for a bond obligor to comply with a surrender demand and requires cancellation of the bond.

Administrative closing of a case does not result in a final order. It is merely an administrative convenience that allows the removal of cases from the calendar in appropriate situations. See *Matter of Gutierrez-Lopez*, 21 I&N Dec. 479 (BIA 1996).

While counsel concedes that administrative closing does not constitute a basis for canceling the bond, he asserts in supplemental briefs that because ICE did not attempt any action in this case for 29 months, it lost detention authority, and the bond should be canceled.

Assuming *arguendo* that ICE has lost detention authority over the bonded alien, the AAO has continually held that the Secretary's authority to maintain a delivery bond is not contingent upon his authority to detain the alien. Counsel argues this ruling is contrary to *Shrode v. Rowoldt*, 213 F.2d 810 (8th Cir. 1954).

Following his arrest for violating immigration laws, Rowoldt, the alien in *Shrode*, was released on a bond conditioned upon his appearance for deportation proceedings. Although the order of deportation became final in April 1952, he was not deported. In October 1952, more than six months after the deportation order became final, Rowoldt was placed on supervisory parole. Immigration officials, however, refused to release him from bond.

In upholding the lower court's decision releasing Rowoldt from bond, the appellate court noted that the statute granted the Attorney General supervisory and limited detention authority but did not authorize the posting of bond. The court stated that the requirement to post bail is tantamount to making the sureties jailers, and that the power to require bail connotes the power to imprison in the absence of such bail. Since the only authority the Attorney General could exercise in Rowoldt's case was supervisory, a bond could not be required.

Since *Shrode*, section 305 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRAIRA) added section 241(a)(1) of the Act, 8 U.S.C. § 1231(a)(1). It provides generally that the Secretary shall remove an alien from the United States within 90 days following the order of removal, with the 90-day period suspended for cause. During the 90-day removal period, the Secretary shall exercise detention authority by taking the alien into custody and canceling any previously posted bond unless the bond has been breached or is subject to being breached. Section 241(a)(2) of the Act, 8 C.F.R. § 241.3(a).

Section 241(a)(3) of the Act provides that if an alien does not

leave or is not removed during the 90-day period, the alien shall be subject to supervision under regulations prescribed by the Secretary. Posting of a bond may be authorized as a condition of release after the 90-day detention period. 8 C.F.R. § 241.5(b). Thus, unlike in *Shrode*, the Secretary has the continuing authority to require aliens to post bond following the 90-day post-order detention period.

The obligor is bound by the terms of the contract to which it obligated itself. Under the terms of the Form I-352 for bonds conditioned upon the delivery of the alien, the obligor contracted to "cause the alien to be produced or to produce himself/herself . . . upon each and every written request until exclusion/deportation/removal proceedings . . . are finally terminated." (Emphasis added). Thus, the obligor is bound to deliver the alien by the express terms of the bond contract until either exclusion, deportation or removal proceedings are finally terminated, or one of the other conditions occurs.

Counsel posits that if ICE no longer has detention authority over the alien, the delivery bond must terminate by operation of law. However, this is contrary to the holdings of *Zadvydas v. Davis*, 533 U.S. 678 (2001) and *Doan v. INS*, 311 F.3d 1160 (9th Cir. 2002). In *Zadvydas*, the Supreme Court expressly recognized the authority of the legacy INS to require the posting of a bond as a condition of release after it lost detention authority over the alien, even though a bond was not provided as a condition of release by the statute. In *Doan*, the 9th Circuit held the legacy INS had the authority to require a \$10,000 delivery bond in a supervised release context even though it did not have detention authority. Although these cases arose in the post-removal period, they make clear that detention authority is not the sole determining factor as to whether ICE can require a delivery bond.

The bond contract provides that it may be canceled when (1) exclusion/deportation/removal proceedings are finally terminated; (2) the alien is accepted by ICE for detention or deportation/removal; or (3) the bond is otherwise canceled. The circumstances under which the bond may be "otherwise canceled" occur when the Secretary or the Attorney General imposes a requirement for another bond, and the alien posts such a bond, or when an order of deportation has been issued and the alien is taken into custody. As the obligor has not shown that any of these circumstances apply, the bond is not canceled.

It is noted that the present record contains evidence that a properly completed questionnaire was forwarded to the obligor with the notice to surrender pursuant to the Amwest/Reno Settlement Agreement, entered into on June 22, 1995 by the Immigration and Naturalization Service (legacy INS) and Far West Surety Insurance Company.

Delivery bonds are violated if the obligor fails to cause the bonded alien to be produced or to produce himself/herself to an

immigration officer or immigration judge, as specified in the appearance notice, upon each and every written request until removal proceedings are finally terminated, or until the said alien is actually accepted by ICE for detention or removal. *Matter of Smith*, 16 I&N Dec. 146 (Reg. Comm. 1977).

The regulations provide that an obligor shall be released from liability where there has been "substantial performance" of all conditions imposed by the terms of the bond. 8 C.F.R. § 103.6(c)(3). A bond is breached when there has been a substantial violation of the stipulated conditions of the bond. 8 C.F.R. § 103.6(e).

8 C.F.R. § 103.5a(a)(2) provides that personal service may be effected by any of the following:

- (i) Delivery of a copy personally;
- (ii) Delivery of a copy at a person's dwelling house or usual place of abode by leaving it with some person of suitable age and discretion;
- (iii) Delivery of a copy at the office of an attorney or other person including a corporation, by leaving it with a person in charge;
- (iv) Mailing a copy by certified or registered mail, return receipt requested, addressed to a person at his last known address.

The evidence of record indicates that the Notice to Deliver Alien was sent to the obligor at [REDACTED] on August 5, 2003 via certified mail. This notice demanded that the obligor produce the bonded alien on September 5, 2003. The domestic return receipt indicates the obligor received notice to produce the bonded alien on August 11, 2003. Consequently, the record clearly establishes that the notice was properly served on the obligor in compliance with 8 C.F.R. § 103.5a(a)(2)(iv).

Furthermore, it is clear from the language used in the bond agreement that the obligor shall cause the alien to be produced or the alien shall produce himself to an ICE officer upon each and every request of such officer until removal proceedings are either finally terminated or the alien is accepted by ICE for detention or removal.

It must be noted that delivery bonds are exacted to insure that aliens will be produced when and where required by ICE for hearings or removal. Such bonds are necessary in order for ICE to function in an orderly manner. The courts have long considered the confusion which would result if aliens could be surrendered at any time or place it suited the alien's or the surety's convenience. *Matter of L-*, 3 I&N Dec. 862 (C.O. 1950).

After a careful review of the record, it is concluded that the conditions of the bond have been substantially violated, and the collateral has been forfeited. The decision of the field office director will not be disturbed.

ORDER: The appeal is dismissed.